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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 587,654	06.05.2000	Scott C. Miller	2171	8911

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MILLIKEN & COMPANY
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/13/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/587,654

Applicant(s)

MILLER ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11-22,24,25,27-33,35-37,42-52,54-56 and 58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9, 11-22, 24, 25, 27-33, 35-37, 42-52, 54-56, and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment A, submitted as Paper No. 12 on March 24, 2003, has been entered. Claims 1, 3, 9, 11, 15, 24, 25, 27-30, 35-37, 46-52, 54-56, and 58 have been amended, while claims 2, 10, 23, 26, 34, 38-41, 53, 57, and 59-68 have been cancelled. Thus, the pending claims are 1, 3-9, 11-22, 24, 25, 27-33, 35-37, 42-52, 54-56, and 58.

2. Said amendment renders moot the double patenting rejection set forth in section 6 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 112, 2nd rejections set forth in sections 10-19.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 3-9, 11, 19, 24, 25, and 27-30, 33, 35, 37, 44-48, 52, and 54 are rejected under 35 USC 103(a) as being unpatentable over US 4,522,857 issued to Higgins in view of EP 048 968 issued to Porter et al.

Claim 1 was previously rejected under 102 by the cited Higgins '857 patent. However, applicant has amended independent claim 1 to include the limitations of claims 2 and 10. Since claim 10 was already anticipated by Higgins '857 and since claim 2 was previously rejected under 103 as being obvious over Higgins '857 in view of the cited Porter reference, claim 1 is now rejected over the Higgins '857 patent in view of Porter for analogous reasons. (See sections

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21 and 25 of the last Office Action for discussions of the references with respect to the claimed invention.)

5. Claims 1, 3-11, 15-17, 19-31, 33-39, 44-54, and 56-58 are rejected under 35 USC 103(a) as being unpatentable over US 5,540,968 issued to Higgins in view of the cited Higgins '857 patent and in further view of EP 048 968 issued to Porter et al.

Claim 1 was previously rejected under 102 as being anticipated by Higgins '968. However, with the limitations of claims 2 and 10 incorporated into independent claim 1, said claims are now rejected under 103 as being obvious over Higgins '968 in view of Higgins '857 and Porter, for reasons analogous to those set forth in sections 22, 25, 28, and 29 of the last Office Action.

6. Claims 12-14 and 18 are rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '857 and Porter references as applied above, and in further view of EP 309 816 issued to Turner et al. for reasons analogous to those set forth in section 26 of the last Office Action.

7. Claims 12-14 and 18 are rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '968, Higgins '857, and Porter references as applied above, and in further view of EP 309 816 issued to Turner et al. for reasons analogous to those set forth in section 26 of the last Office Action.

8. Claims 16, 17, and 20-22 are rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '857 and Porter references as applied above, and in further view of the Higgins '968 patent, for reasons analogous to those set forth in sections 27 and 28 of the last Office Action.

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9. Claim 55 is rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '857 and Porter references as applied above, and in further view of US 6,089,007 issued to Hamilton et al. for reasons analogous to those set forth in section 30 of the last Office Action.

10. Claim 55 is rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '968, Higgins '857, and Porter references as applied above, and in further view of the cited Hamilton patent, for reasons analogous to those set forth in section 30 of the last Office Action.

Response to Arguments

11. Applicant's arguments filed with Amendment A have been fully considered but they are not persuasive.

12. Applicant traverses the above prior art rejections by asserting that while Porter does disclose a low face weight primary carpet, Porter teaches away from the invention by employing a cushion coating weight that is more than twice the amount presently claimed (Amendment A, page 11, last paragraph). Additionally, applicant notes that a reference must be considered for everything it teaches and that one skilled in the art would not be motivated to go against the Porter teaching that heavy cushion coating weights are needed when using low face weight carpets (Amendment A, page 12, 1st paragraph).

13. In response, it is noted that the rejections are not based upon Porter alone, or even as Porter as a primary reference. Porter is merely employed as a secondary or tertiary reference to teach a low face weight carpet. The primary or secondary reference of Higgins '857 clearly teaches cushion coating weights well within the range presently claimed. Also, since both Higgins references are silent with respect to the face weight of the carpet, one must look to

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prior art such as Porter to determine suitable face weights. Furthermore, the so-called heavy cushion weight of Porter would not go against the teachings of Higgins, since Higgins teaches a broad range of coating weights which encompasses both the presently claimed low weight and the so-called heavy weight of Porter. Thus, one skilled in the art would have a reasonable expectation of success when employing a low face weight carpet as taught by Porter in either of the Higgins carpets. Therefore, applicant's arguments are found unpersuasive and the rejections stand.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

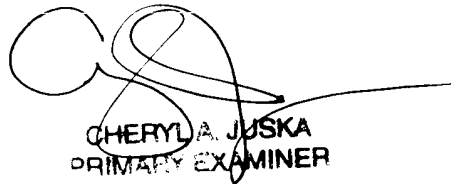
15. Any inquiry concerning this communication or earlier communications from the

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Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER